

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

BILLY DRIVER, JR.,

Plaintiff,

v.

CHAVEZ,

Defendant.

No. 2:22-CV-1447-DJC-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel, ECF No. 42.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. Plaintiff states that appointment of counsel is warranted to help him with
10 discovery and gathering evidence. See ECF No. 42, pg. 1. Plaintiff further requests the
11 appointment of a specific attorney, Arielle Tolman, as well as an expert witness regarding
12 “CDCR[’s] unlawful use of force protocols.” See id. Each of Plaintiff’s requests require a finding
13 of exceptional circumstances and the Court finds that the circumstances presented are not
14 exceptional but represent circumstances common to nearly every prisoner bringing a lawsuit in
15 federal court. The docket reflects that, to date, Plaintiff has been able to articulate their claims
16 and arguments. Moreover, the issues presented in this case are not so complex legally or
17 factually as to require counsel. Finally, at this stage of proceedings prior to the completion of
18 discovery or filing of any dispositive motions and supporting evidence, the Court cannot say that
19 Plaintiff has shown a likelihood of success on the merits. For these reasons, Plaintiff has not
20 demonstrated exceptional circumstances warranting appointment of counsel.

21 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s request for both the
22 appointment of counsel and the appointment of an expert witness, ECF No. 42, is denied.

23 Dated: July 6, 2023



24 DENNIS M. COTA
25 UNITED STATES MAGISTRATE JUDGE
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